



California Fair Political Practices Commission

September 12, 1989

James L. Sepulveda
Deputy District Attorney
Contra Costa County
Court House, Fourth Floor
P.O. Box 670
Martinez, CA 94553

Re: Your Request for Informal Assistance
Our File No. I-89-428

Dear Mr. Sepulveda:

As the person in the Contra Costa County District Attorney's Office who is responsible for enforcing current state laws on campaign and election issues, you have been presented with a hypothetical question involving the Political Reform Act (the "Act").¹ Because your question is hypothetical, we are treating your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).²

QUESTIONS

1. If a contributor gives a candidate for local office a painting with a fair market value of \$1,100, for the purpose of auctioning the painting off at a future fund-raiser, has the contributor made a contribution in excess of the contribution limits?

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329 (c)(3).)

2. If the candidate auctions off the painting at a fund raiser and receives \$500, has the purchaser made a contribution to the candidate?³

3. What occurs if, at the time of contribution, the painting has a fair market value of \$500, but at the time of the auction the value has risen to \$1,100.

CONCLUSIONS

1. The contributor has made a contribution of \$1,100, which exceeds the contribution limit for persons.

2. The purchaser has not made a contribution unless the purchase price exceeds the fair market value of the painting.

3. If the fair market value of the painting is \$1,100 at the time of its sale, only the amount received in excess of \$1,100 constitutes a contribution. The amount received up to \$1,100 constitutes a "miscellaneous increase to cash."

ANALYSIS

A contribution is a payment made for political purposes. (Section 82015 and Regulation 18215, copy enclosed.) A payment includes "...services or anything of value, whether tangible or intangible." (Section 82044.)

Section 82025.5 provides the standard for valuing nonmonetary contributions. It states in pertinent part:

Whenever the amount of goods, services, facilities, or anything of value other than money is required to be reported under this title, the amount reported shall be the fair market value...

With respect to your first question, the contributor has made a contribution. (Section 82015; Regulation 18215.) You have

³ Your actual questions indicated that in the first question the contribution is made in a "non-election fiscal year," and in the second question the contribution is made in "the election fiscal year." In our telephone conversation, you indicated that your questions did not involve candidates for the Legislature. In such circumstances, the fact that the contributions are made in a "non-election fiscal year" rather than an "election fiscal year" are not of significance and have been eliminated in order to prevent confusion. It should be noted, however, that under the recent decision in Taxpayers to Limit Campaign Spending v. Fair Political Practices Commission, 89 Daily Journal DAR 9863, the Court of Appeal reinstated provisions of Proposition 68 on the June 7, 1988 ballot, which prohibit non-election year fund-raising by legislative candidates. The ruling is not yet final.

indicated that the fair market value of the painting is \$1,100. Accordingly, this constitutes a contribution of \$1,100.⁴

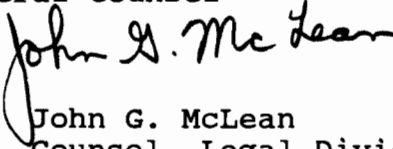
Section 85301 limits contributions from persons to \$1,000 per candidate per fiscal year. Accordingly, in the present situation, the painting could not be contributed to a candidate by one person.⁵

With respect to your second question in which a person purchases the painting at the auction for less than its fair market value, that person has not made a contribution because he or she has received full and adequate consideration for his or her payment. The payment is a "miscellaneous increase to cash," which is reported on Schedule G. If the buyer pays more than the fair market value of the item, the amount in excess of the item's value constitutes a contribution. (Moniz Advice Letter, No. A-88-028; copy enclosed.)

If you have any further questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: John G. McLean
Counsel, Legal Division

KED:JGM:aa

Encls.

⁴ You have asked whether the fair market value of the painting is determined by what someone actually pays at the auction. It is not. The fair market value is determined by what the item would cost the committee to purchase on the open market. (McMillan Advice Letter, No. I-86-059, copy enclosed.) However, if the items actually sell for more or for less than the value you initially attached to them, and you believe the amount paid is the "fair market value," the committee should amend its statement to reflect the amount actually received as the fair market value of the contribution. (Moniz Advice Letter, No. A-88-028; copy enclosed.)

⁵ Contributions by a "political committee" are limited to \$2,500 per candidate per fiscal year. Contributions by a "broad based political committee" or political party are limited to \$5,000 per candidate per fiscal year.

Office of District Attorney

Court House, Fourth Floor
P.O. Box 670
Martinez, California 94553
(415) 646-4500

Contra Costa County



Gary T. Yancey
District Attorney

FPPC

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RECEIVED

July 18, 1989

Fair Political Practices Commission
Technical Assistance Division
P.O. Box 807
Sacramento, CA 95804-0807

RE: Proposition 73 and Auctions As Fund Raisers

To Whom It May Concern:

As the person in the Contra Costa County District Attorneys Office who is responsible for enforcing FPPC rules and regulations as well as current state law on campaign and election issues, the following scenario has been presented to me and I am frankly not sure of the answer.

SCENARIO

1. Candidate accepts a painting from contributor A in a non-election fiscal year for the purpose of auctioning the painting off at some future fund raiser. It is determined that the "fair market value" of the painting is \$1,100.00.

2. During the election fiscal year, candidate auctions off the painting at a fund raiser and receives \$500.00 from contributor B.

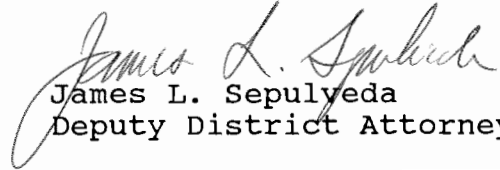
Has contributor A made a contribution in excess of the campaign limit? Or is the real "fair market value" determined by what someone actually pays for the item at the auction? How should the contributions from A and B be properly reported? Is the measure of any non-monetary contribution the "fair market value" of that item at the time of the contribution? In the scenario above, what if the fair market value of the painting at the time of the contribution was \$500 but at the time of the auction had risen to \$1,100.00?

Any assistance that you can provide in answering these questions would be of great help to me as I have to try and guide and regulate my local politicians in these matters.

Your prompt response in this regard would be appreciated.

Very truly yours,

GARY T. YANCEY
District Attorney


James L. Sepulveda
Deputy District Attorney



California Fair Political Practices Commission

July 25, 1989

James L. Sepulveda
Deputy District Attorney
County of Contra Costa
P.O. Box 670
Martinez, CA 94553

Re: Letter No. 89-428

Dear Mr. Sepulveda:

Your letter requesting advice under the Political Reform Act was received on July 21, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John McLean an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
General Counsel

KED:plh